

AMENDED IN SENATE MAY 6, 2008

AMENDED IN SENATE JANUARY 31, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 218

**Introduced by Assembly Member Saldana
(Coauthor: Assembly Member Huffman)**

January 29, 2007

An act to add Sections 25214.10.3 and 25214.10.4 to the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 218, as amended, Saldana. Hazardous waste: electronic waste.

(1) Existing law requires the Department of Toxic Substances Control to adopt regulations to prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, due to the presence of certain heavy metals, as specified. Existing law requires these regulations to take effect January 1, 2007, or on or after the date that the Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, (Directive 2002/95/EC) takes effect, whichever date is later. Existing law defines the term “electronic device,” for purposes of those provisions to have the same meaning, with reference to the Electronic Waste Recycling Act of 2003, as “covered electronic device” which is defined as a video display device, as specified, that is identified by the department, pursuant to specified regulations, as a presumed hazardous waste when discarded.

A violation of the hazardous waste control laws, including a regulation adopted pursuant to those laws, is a crime.

This bill would define the term “RoHS Directive” to mean that directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment, cited as Directive 2002/95/EC, as amended on or before January 1, 2009, and would define the term “electronic equipment” for purposes of the bill’s requirements to mean a device that is dependent on electric currents or electromagnetic fields to work properly or that is a device for the generation, transfer, or measurement of electric currents or fields that falls within the scope of Article 2 of Directive 2002/96/EC, is designed for use with a voltage rating that does not exceed 1,000 volts for alternating current and 1,500 volts for direct current, and falls within the scope of Article 2.1 of the RoHS Directive.

The bill would exclude from the definition of “electronic equipment” certain electronic devices, including fixed-installation devices that are electrical or mechanical, or electrical and mechanical, as specified, electrical and electronic equipment in aeronautical and aerospace applications, and certain refrigeration equipment.

The bill would also exclude from the definition of electronic equipment: (A) an electronic device that is a video display device; (B) a medical device that contains a substance that is used to comply with consumer, health, or safety requirements that are required by the Underwriters Laboratories Inc., the federal government, or the state; (C) electronic equipment manufactured before January 1, 2010, as specified; (D) a replacement or spare part for equipment manufactured before January 1, 2010; ~~and~~ (E) an electronic or electrical lighting device; *and (F) Certain communications products and devices.*

The bill would provide that if an electronic device that was exempted before January 1, 2009, by the RoHS Directive is subsequently subjected to the RoHS Directive after that date, the department would be required to adopt regulations requiring a producer to comply with those prohibitions at a date that is at least 24 months after the effective date of the sale prohibition in the European Union.

The bill would require the department’s implementation and enforcement of these provisions to be consistent with all uniform implementation guidelines for the RoHS Directive that are adopted by the European Union or by its member states and would require the department, if it finds that the RoHS Directive is not consistently

implemented by the member states of the European Union, to implement these provisions consistent with a specified document.

The bill would prohibit a producer, as defined, on and after January 1, 2010, from manufacturing for sale in this state electronic equipment that contains a hazardous substance for which the RoHS Directive would prohibit the sale or offering for sale of that electronic equipment in the European Union pursuant to the RoHS Directive. A producer would be required to prepare and, at the request of the department, submit to the department, within 28 days of the date of the request, technical documentation or other information showing that electronic equipment sold or offered for sale is not prohibited from sale by the RoHS Directive.

The bill would also delay until January 1, 2011, the implementation of the bill's requirements for a producer of a major appliance, and until January 2013, for a producer of welding equipment *or plasma cutting equipment* who submits a specified certification to the department. The department would be authorized to require a producer who submits such a certification to pay a fee of not more than \$200 to the department.

The bill would allow a producer to submit a request to the department for an exemption from the bill's requirements, for the use of specified hazardous substances in specified electronic equipment, if there is no technically feasible alternative, available at a reasonable cost, to the use of those hazardous substances or components containing those hazardous substances in the electronic equipment. The department would be authorized to grant or renew an exemption, for a period of not more than 3 years, if the producer submits specified information to the department, including a plan for the proper collection, transportation, and management of the electronic equipment at the end of its useful life. The bill would specify procedures for the granting of an exemption, including procedures for the reimbursement of the department and the protection of trade secrets.

Since a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 25214.10.3 is added to the Health and Safety Code, to read:

25214.10.3. (a) For the purposes of this section and Section 25214.10.4, the following definitions shall apply:

(1) "Electronic equipment" means a device that meets all of the following conditions:

(A) The device is dependent on electric currents or electromagnetic fields to work properly or is a device for the generation, transfer, or measurement of electric currents or fields.

(B) The device falls within the scope of Article 2 of Directive 2002/96/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, and as amended on or before January 1, 2009, by the Commission of European Communities.

(C) The device is designed for use with a voltage rating that does not exceed 1,000 volts for alternating current and 1,500 volts for direct current.

(D) The device falls within the scope of Article 2.1 of the RoHS Directive.

(2) "Electronic equipment" does not include any of the following:

(A) A fixed-installation device that is electrical or mechanical, or electrical and mechanical, that is electrically wired directly to a fixed electrical system, or connected to a fixed mechanical system of a structure, or both a fixed electrical and fixed mechanical system, and that cannot be readily disconnected without altering the electrical or mechanical system connections, or both the electrical and mechanical system connections. An electronic device that is portable and uses an electrical plug as the means to connect to an electrical source is not a fixed-installation electrical or mechanical device, or both an electrical and mechanical device.

(B) Electrical and electronic equipment in all military, commercial, and general aeronautical and aerospace applications, including equipment used to test or monitor aeronautical or aerospace applications.

(C) Commercial refrigeration equipment that is subject to the recycling requirements of Article 10.1 (commencing with Section 25211).

1 (D) An “electronic device” as defined in Section 25214.10.

2 (E) A medical device that meets both of the following
3 conditions:

4 (i) Is listed under Category 8 of Annex 1A of Directive
5 2002/96/EC, adopted by the European Parliament and the Council
6 of the European Union on January 27, 2003, or is defined as a
7 medical device under the federal Food, Drug, and Cosmetic Act
8 (Chapter 9 (commencing with Section 301) of Title 21 of the
9 United States Code).

10 (ii) Contains a substance that is used to comply with the
11 consumer, health, or safety requirements that are required by the
12 Underwriters Laboratories Inc., the federal government, or the
13 state.

14 (F) Electronic equipment that was manufactured before January
15 1, 2010, and subsequently refurbished and sold, or recovered from
16 the initial consumer and reused, or otherwise resold.

17 (G) Electronic equipment that was manufactured for sale before
18 January 1, 2010, and then subsequently leased, resold, financed,
19 brokered, or distributed.

20 (H) Electronic equipment that is a replacement or spare part for
21 electronic equipment that was manufactured before January 1,
22 2010.

23 (I) Electronic equipment or components that are exempt from
24 the RoHS Directive.

25 (J) Electronic or electrical lighting devices.

26 (K) *Electronic equipment, including infrastructure products,*
27 *communications devices, information devices, or information and*
28 *communication devices, that is used by an individual as part of a*
29 *system that augments, or is added to, an existing governmental*
30 *communications system sold before January 1, 2010, and that is*
31 *intended to expand the existing system’s capabilities or use, thus*
32 *prolonging the life of the existing system.*

33 (3) “Hazardous substance” means any substance for which the
34 RoHS Directive prohibits the sale, or offering for sale, of electronic
35 equipment containing that substance.

36 (4) “Producer” means a person who, irrespective of the selling
37 technique used, does any of following:

38 (A) Manufactures and sells electronic equipment under the
39 producer’s own brand.

1 (B) Resells, under the producer's own brand, electronic
2 equipment produced by other suppliers. For the purposes of this
3 section, a person who resells electronic equipment is not the
4 producer of that electronic equipment, if the brand of the producer
5 appears on the equipment, as provided in subparagraph (A).

6 (5) "RoHS Directive" means the directive on the restriction of
7 the use of certain hazardous substances in electrical and electronic
8 equipment RoHS, and is cited as Directive 2002/95/EC, adopted
9 by the European Parliament and the Council of the European Union
10 on January 27, 2003, on the restriction of certain hazardous
11 substances in electronic equipment, as amended on or before
12 January 1, 2009 (13.2.2003 Official Journal of the European
13 Union).

14 (b) (1) Unless granted an exemption pursuant to Section
15 25214.10.4, or except as provided in paragraphs (2) and (3), on
16 and after January 1, 2010, a producer shall not manufacture for
17 sale, in this state, electronic equipment that contains a hazardous
18 substance for which the RoHS Directive would prohibit the sale,
19 or offering for sale, of that electronic equipment in the European
20 Union.

21 (2) A producer of a major appliance, as defined in Section 42166
22 of the Public Resources Code, that is electronic equipment, as
23 defined in this section, and subject to the recycling requirements
24 of Article 10.1 (commencing with Section 25211), shall have until
25 January 1, 2011, to comply with the requirements of this section
26 with regard to that major appliance.

27 (3) A producer of welding equipment *or plasma cutting*
28 *equipment*, as used in accordance with Section 4795 of Title 8 of
29 the California Code of Regulations, may, for each affected model,
30 no later than November 30, 2009, certify under penalty of perjury
31 to the department that the producer is making efforts to comply
32 with this section. A model of welding equipment *or plasma cutting*
33 *equipment* for which a certificate is submitted to the department
34 shall have until January 1, 2013, to comply with the requirements
35 of this section. The department may require a producer to submit
36 a fee for certification of not more than two hundred dollars (\$200)
37 per certificate for the department's costs of accepting and
38 acknowledging that certificate.

39 (4) A producer shall prepare and, at the request of the
40 department, submit to the department within 28 days of the date

1 of the request, technical documentation or other information
2 showing that electronic equipment sold or offered for sale by that
3 producer is not prohibited from sale by the RoHS Directive.

4 (5) If electronic equipment that is exempted before January 1,
5 2009 from the RoHS Directive is subsequently prohibited on or
6 after January 1, 2009 from being sold or offered for sale in the
7 European Union pursuant to the RoHS Directive, or pursuant to
8 any amendments made to the RoHS Directive on and after January
9 1, 2009, the department shall adopt regulations specifying that a
10 producer of that electronic equipment sold or offered shall comply
11 with paragraph (1) with regard to that electronic equipment at a
12 date that is at least 24 months after the effective date of the
13 prohibition of that sale in the European Union.

14 (c) The department shall implement and enforce this section
15 and Section 25214.10.4, in accordance with all of the following:

16 (1) The department shall not prohibit the manufacture or sale
17 of electronic equipment that is different than, or otherwise not
18 prohibited by, the RoHS Directive.

19 (2) The department shall not impose any requirements or
20 conditions that are in addition to, or more stringent than, the
21 requirements and conditions expressly authorized by this section.

22 (3) (A) The department's implementation and enforcement of
23 this section shall be consistent with any uniform implementation
24 guidelines for the RoHS Directive that are adopted by the European
25 Union, by its member states, or by both.

26 (B) If the department finds that any section of the RoHS
27 Directive is not consistently implemented by the member states
28 of the European Union, the department's implementation and
29 enforcement of this section and Section 25214.10.4 shall be
30 consistent with the provisions of the Statutory Instrument 2005
31 No. 2748 of the United Kingdom, as in effect on July 1, 2006.

32 SEC. 2. Section 25214.10.4 is added to the Health and Safety
33 Code, to read:

34 25214.10.4. (a) A producer may submit a request to the
35 department for an exemption from the prohibition of subdivision
36 (b) of Section 25214.10.3 for the use of a specified hazardous
37 substance in specified electronic equipment if there is no
38 technically feasible alternative, available at a reasonable cost, to
39 the use of that specified hazardous substance, or component
40 containing that hazardous substance, in the electronic equipment.

1 The department may grant a producer an exemption from the
2 prohibition of subdivision (b) of Section 25214.10.3, or renew an
3 exemption, for a period of not more than three years, if all of the
4 following conditions are met:

5 (1) The producer of the electronic equipment submits a request
6 for an initial or renewed exemption to the department that specifies
7 the hazardous substance in the electronic equipment for which an
8 exemption is requested, along with the supporting information
9 required by subdivision (b).

10 (2) The supporting information submitted by the producer
11 pursuant to subdivision (b) demonstrates that the electronic
12 equipment is eligible for the exemption.

13 (3) The producer requesting the exemption enters into a cost
14 reimbursement agreement with the department, pursuant to
15 subdivision (e), and complies with the terms of that agreement.

16 (b) The supporting information that a producer shall submit to
17 the department, before the department may grant or renew an
18 exemption pursuant to this section, shall include all of the
19 following:

20 (1) The name of the producer requesting the exemption and the
21 name, position, and contact information for the person who is the
22 producer's contact person on all matters concerning the exemption.

23 (2) An identification and description of the hazardous substance,
24 including the quantity of the hazardous substance, and the
25 electronic equipment for which the exemption is requested.

26 (3) For each use for which an exemption is requested,
27 information that fully and clearly demonstrates that there is no
28 technically feasible alternative, available at a reasonable cost, to
29 the use of that hazardous substance, or component containing that
30 hazardous substance in the electronic equipment. This information
31 shall include, but is not limited to, a description of past, current,
32 and planned future efforts to seek or develop those alternatives, a
33 description of all alternatives that have been considered, and an
34 explanation of the technical or economic reasons as to why each
35 alternative is not satisfactory.

36 (4) Information that fully and clearly demonstrates that the
37 electronic equipment is constructed, with regard to the use of the
38 specified hazardous substance, so that the release of the specified
39 hazardous substance to the environment is prevented.

1 (5) (A) A feasible, effective, detailed, and complete plan for
2 the proper collection, transportation, and management of the
3 electronic equipment at the end of its useful life, including removal
4 and proper management of the hazardous substance contained in
5 the product, and information fully and clearly demonstrating that
6 the producer, individually, or in conjunction with an industry or
7 trade group, is committed to, and capable of, implementing the
8 plan. The plan shall include an education and outreach component
9 to ensure that users of the product are aware of available collection
10 opportunities and legal requirements for management of the product
11 once it becomes a waste.

12 (B) An exemption granted pursuant to this section shall become
13 null and void if the producer individually, or in conjunction with
14 an industry or trade group, has not implemented the plan submitted
15 in support of the exemption request within six months of the
16 effective date of the exemption.

17 (6) A copy of all similar exemption requests, including
18 supporting documentation, submitted by the applicant to other
19 jurisdictions, and a copy of each jurisdiction's response to the
20 exemption request.

21 (c) A producer who requests an exemption, or an exemption
22 renewal, pursuant to this section shall enter into a written
23 agreement with the department in accordance with the procedures
24 set forth in Article 9.2 (commencing with Section 25206.1), for
25 reimbursement of all costs incurred by the department in processing
26 and responding to the request.

27 (d) (1) The department shall treat as confidential any
28 information provided pursuant to this section that is a trade secret
29 and that is identified at the time of submission by a producer, in
30 the same manner as the procedures adopted by the department
31 pursuant to Section 25173 with regard to hazardous waste handling
32 and disposal. Any information that is not a trade secret, or that is
33 not identified by the producer as a trade secret, shall be made
34 available to the public upon request pursuant to the California
35 Public Records Act (Chapter 3.5 (commencing with Section 6250)
36 of Division 7 of Title 1 of the Government Code).

37 (2) For purposes of this section "trade secret" has the same
38 meaning as defined in Section 25173.

39 (e) (1) The department shall grant or deny an exemption
40 requested pursuant to this section no later than 180 calendar days

1 after receiving the exemption request, including all information
2 determined by the department to be necessary to determine if the
3 exemption request complies with the requirements of this section.

4 (2) An exemption shall not be deemed to have been granted if
5 the department fails to grant or deny the exemption request within
6 the time limit specified in paragraph (1).

7 (3) Nothing in this subdivision shall preclude the applicant and
8 the department from mutually agreeing to an extension of the time
9 limit specified in paragraph (1).

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.